

DEPARTMENT OF MARINE RESOURCES – PROCEDURAL RULES

CHAPTER 2

AQUACULTURE LEASE REGULATIONS

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## DEPARTMENT OF MARINE RESOURCES

## Chapter 2 - Aquaculture Lease Regulations

## 2.05 Definitions

1. The definitions set forth in 12 M.R.S.A. §6072 shall apply to the terms used in this chapter.

- A. Aquaculture.

"Aquaculture" means the culture or husbandry of marine organisms by any person. Storage or any other form of impounding or holding wild marine organisms, without more, shall not qualify as aquaculture. In order to qualify as aquaculture, a project must involve affirmative action by the lessee to improve the growth rate or quality of the marine organism.

- B. Culture or Husbandry.

"Culture or husbandry" means the production, development or improvement of a marine organism.

- C. Riparian Owner.

For the purposes of 12 M.R.S.A. §§6072 and 6072-A and 6072-B "riparian owner" means a shorefront property owner whose property boundaries are within 1000 feet of the proposed lease boundaries.

For the purposes of 12 M.R.S.A. §6072-C "riparian owner" means a shorefront property owner whose property boundaries are within 300 feet of a limited-purpose aquaculture (LPA) license site.

- D. Existing or Potential Uses.

"Existing or Potential Uses" means all water-related activities and resources including, but not limited to, commercial and recreation fisheries, marine transportation, aquaculture, and boating.

- E. Adverse Effects.

"Adverse Effects" means impediments to water-related activities or unreasonable interference with natural processes supporting those activities. This includes, but is not limited to, floating or submerged obstruction, habitat destruction, natural flora and fauna displacement, current flow alteration, and lowered water quality.

- F. Structure.

"Structure" means anything that is constructed or erected with a fixed location, or attached to anything with a fixed location, on intertidal or subtidal lands.

- G. Discharge.

"Discharge" means, for the purpose of this Chapter only, any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of any pollutant including, but not limited to, the addition of feed, therapeutants or pesticides to waters of the State.

- H. Scientific research.

"Scientific research" is a study or investigation intended to lead to new discoveries or advances within its field or to impact on the progress in that field, as determined by the Department. In making its decision, the Department shall consider the nature, funding and objective of the planned research. The results of any scientific research shall be part of the public record.

- I. Commercial research and development.  
 "Commercial research and development" means a study by any person or company designed to try new species, new growing or harvesting techniques, new sites or to determine the commercial viability of an operation. The results of such research will not be part of the public record.
- J. LPA license Health Areas.  
 "Limited-purpose aquaculture (LPA) license Health Areas" means the territorial waters described as follows:
  - (1) Area 1: Downeast and Canada border  
 Eastern Line - Head of tide on the St. Croix River and International Boundary Line Canada and the U.S. (Maine).  
 Western Line from West Quoddy Head Lighthouse extending bearing 40° magnetic to the International Boundary Line Canada and the U.S. (Maine).
  - (2) Area 2: West of Quoddy Head to Schoodic Point  
 Eastern Line - West Quoddy Head Lighthouse extending bearing 40° magnetic to the International Boundary Line Canada and the U.S. (Maine).  
 Western Line – from Schoodic Point due South (True) to the boundary of Maine's territorial waters.
  - (3) Area 3: Schoodic Point to the Maine - New Hampshire border  
 Eastern Line – from Schoodic Point due South (True) to the boundary of Maine's territorial waters.  
 Western Line – the Maine and New Hampshire border.
  - (4) Area 4: Damariscotta River  
 Head of tide to a line drawn from Emerson Point, at the southern most tip of Ocean Point in the town of Boothbay, easterly to Thrumcap Island, then northerly to the southern tip of Rutherford Island, South Bristol.
  - (5) Area 5: Casco Bay  
 Eastern Line - Small Pt. due South Magnetic to the boundary of the territorial waters.  
 Western Line - A straight line from Active Lt. 2 Lt's. Cape Elizabeth to C "1" East Hue & Cry (43° 31.9N)(70° 08.8W); then proceed WSW to the boundary of the territorial waters.
- K. Fallow.  
 "Fallow" means a lease site without cultured organisms.
- L. Mean Low-Water  
 "Mean low-water" means the average low tide. An approximation of mean low-water is made by observing the low-water mark when the tide height is at 0.0 feet as indicated on a tide table.

## 2.07 Pre-Application Requirements for Standard Leases

1. Pre-application meeting. Prior to filing an application for a standard lease with the Department, an applicant shall attend a pre-application meeting with DMR staff and the harbor master(s) and/or a municipal officer(s) or other designee(s) of the municipality(ies) in which the proposed lease is located to discuss the proposed application. The pre-application meeting will be held in the municipality in which the proposed lease site is predominantly located. The purpose of the meeting will be for the applicant to introduce the proposal to the municipality and the Department and for the applicant and the Department to gain local knowledge from the municipal officials. In addition the pre-application meeting will specifically define the environmental baseline or characterization requirements and other informational needs, including approximate location of

the lease site that the Department determines are necessary to adequately present the proposed lease for review.

2. Pre-application scoping session. The applicant shall hold a pre-application scoping session in the municipality in which the proposed standard lease is predominantly located. The applicant is required to attend the pre-application scoping session. The purpose of a pre-application scoping session shall be to:
  - A. Familiarize the general public with the proposal;
  - B. Allow the public an opportunity to provide the applicant with additional local information prior to development of an application;
  - C. Allow the public an opportunity to ask questions of the applicant and the Department; and
  - D. Provide the Department with information that can be used during the Department site review.
3. Notice. The Department shall provide notice of the scoping session to riparian landowners within 1,000 feet of the proposed lease, to officials of the municipality or municipalities in which the proposed lease would be located, and interested governmental agencies. All other interested individuals or parties may request to be placed on the Department's service list for notification of the scoping sessions or other proceedings relating to the processing of aquaculture lease applications. The Department shall issue a press release to the print media regarding the public scoping session and the applicant shall publish a notice in a newspaper of general circulation in the area of the proposed lease at least ten days prior to the scoping session.
4. Application submission. During the 6 months following the scoping session, or until a completed application is received by the Department, whichever is earlier, the Department cannot accept an application for a lease in the same location(s) as any proposed lease discussed at the public scoping session. Such locations must be clearly identified and agreed to by the Department in consultation with the applicant by the conclusion of the public scoping session.

#### 2.10 Application Requirements for Standard Leases

1. Form. Aquaculture lease applications shall be submitted on forms prescribed by the Commissioner and shall contain all information required by applicable statutes, regulations in Chapter 2 and by the Commissioner for the consideration of the aquaculture project. Hearings on applications will not be held until both the applicant and the Department have done the required environmental reviews.

For discharge applications, the Department shall coordinate with the Department of Environmental Protection and other state and federal agencies to ensure that all state and federal regulatory requirements are identified.

2. Fee. An application shall not be considered complete unless a non-refundable application fee has been paid. The amount of the fee is determined by the nature of the aquaculture activity proposed. The application fees for no discharge leases and discharge leases are as follows:

APPLICATION FEES:	No Discharge leases	Discharge leases
Effective January 1, 2007:	\$1,500	\$2,000

3. Required Elements. In addition to requirements specified in 12 M.R.S.A. §6072(4), the following at a minimum is required for an application to be considered complete:
  - A. A description of the location of the proposed lease by corner coordinates or boundaries with coordinates for one starting point, a map of the lease area and its adjoining waters

and shorelands, with the names of the known riparian owners indicated on the map as listed in the municipal or State property tax records and a certified list of the names and addresses of riparian owners as they are listed in the municipal or State property tax records. In determining ownership, assume ownership to the mean low water mark unless otherwise known.

- B. A list of the species to be cultivated and a description of the proposed source(s) of organisms to be grown at the site. (See D.M.R. Regulation: Chapter 24, "Importation of Live Organisms"). The applicant shall identify the source of organisms to be cultured for the lease site.

C. Environmental Characterization and Baseline.

- (1) No discharge applications. Applications for leases with no discharge require the submission of an environmental characterization that shall include, but not be limited to, bottom characteristics, resident flora and fauna, tide levels, and current speed and direction.

For non-discharge applications, the Department may waive the requirement for current speed and direction if the information is not necessary for applying the decision criteria or other requirements associated with the proposed lease. Examples of sites where this requirement may be waived include, but are not limited to, very shallow sites or areas of little or very limited current flow.

This environmental characterization shall be used to provide a description of the physical and ecological impact of the project on existing and potential uses of the site as a result of the operation. Applicants may do more than one site characterization, but one characterization must be completed between April 1 and November 15, dates inclusive.

- (2) Discharge applications. Applicants that have submitted applications that involve a discharge into State waters must also conduct a Department approved environmental baseline according to Chapter 2.10(3)(C)(2)(a) and (b) below. The baseline will serve as a benchmark for monitoring the effects of farms on sediments, marine organisms, and water quality. The baseline requirements are as follows:

This baseline shall be used to provide a description of the physical and ecological impact of the project on existing and potential uses of the site as a result of the operation. Applicants may do more than one baseline, but one baseline must be completed between April 1 and November 15, dates inclusive.

The baseline must include a clear and decipherable video or still photography showing bottom characteristics as well as the written description.

(a) Sediment & benthic characterization

- (i) A visual survey shall be conducted to document all representative bottom types within the proposed lease area. Representative bottom types include boulder-cobble, gravel, sand, mud, and submerged aquatic vegetation. The survey shall indicate generally whether the lease area is depositional or erosional. The survey shall be documented by video or still photography. If a site is too deep or deemed unsafe to be surveyed by SCUBA diver, then remote video or still photography documentation shall suffice. The results of the visual survey shall be summarized in writing and a copy of the documentation submitted with the application.

The applicant shall confirm the number and the extent of survey transects with the Department prior to conducting the visual survey, and the Department may

reduce or increase the number of transects depending on site characteristics or other existing information. Under no circumstances shall the visual survey be waived.

In addition to the minimum diver survey and video or photographic documentation, the Department may require that the bottom substrate be characterized remotely through the use of seismic reflection surveys (side-scan) or a fish finder. A sufficient number of transects to characterize the entire area within the proposed lease must be taken.

- (ii) Sediment cores must be taken to adequately sample representative bottom types. Each core's location shall be accurately described. Sediment analysis shall report core depth, depth of any unconsolidated organic material, total organic carbon (cg / g or centigrams per gram) in percent, and grain size distribution (%) from coarse gravel to clay size fractions. Sediment cores may be taken as a subsample of the benthic cores described below in subsection (iii).
- (iii) Benthic samples shall be sieved through a 1.0 mm sieve and the infauna organisms enumerated and identified to the species or the lowest practical taxonomic level, whichever is higher. A general characterization of the community structure must be provided with the infauna data and sampling methods shall be described.

(b) Water quality characterization

Water column quality shall be characterized on two separate occasions, one of which shall be conducted between August 15 and September 15. Characterization of water temperature, dissolved oxygen concentrations, and salinity shall encompass two tidal cycles in order to provide a representative description of conditions at the site. At least one profile shall be taken no later than 2 hours after sunrise. Current velocity and direction shall be conducted over at least a 16-hour period. Readings shall be at intervals of no less than 3 readings per hour.

On sites where water depth is 30 feet or less at mean low water, samples shall be taken at near surface and near bottom. On sites where water depth is greater than 30 feet at mean low water, samples shall be taken at near surface, the depth corresponding to the bottom of the nets, and near bottom.

Data shall be included in both summarized, or graphical format, and unsummarized format in the application.

- D. A description of the commercial and recreational navigation uses of the proposed lease site, including type, volume, time, duration, location and direction of traffic.
- E. A description of the degree of exclusive use required by the project. This shall include a description of the use intended for the site by the applicant.
- F. A description of current commercial and recreational fishing occurring in the proposed lease tract and the immediate vicinity of the proposed lease site. The description should include type, duration and amount of activity.
- G. The written permission of every riparian owner whose land to the low water mark will actually be used.
- H. A description of riparian owner's current use of lease site for purposes of access to riparian owned land.

- I. Financial Capacity. The applicant shall provide information showing, to the satisfaction of the Department, that it has obtained all of the necessary financial resources to operate and maintain all aspects of the proposed aquaculture activities. Each applicant shall submit accurate and complete cost estimates of the planned aquaculture activities. The following submissions are examples of acceptable documentation indicating adequate financial capacity:
  - (1) a letter from a financial institution or funding agency showing intent or willingness to commit a specified amount of funds, or
  - (2) the most recent corporate annual report and supporting documents indicating sufficient funds to finance the aquaculture activities, or
  - (3) copies of bank statements or other evidence indicating availability of the unencumbered funds or proof that equipment and seed stock are available to the applicant.
- J. Technical Capability. The applicant shall submit a resume' or other documentation as evidence of technical expertise and capability to accomplish the proposed project.
- K. Equipment. The applicant shall submit detailed specifications on all gear, including nets, pens, and feeding equipment to be used on the site. Vessels that service a site are not subject to this provision. This information shall include documentation that the equipment is the best available technology for the proposed activity. Where the Department determines in the review of the application that technological or economic limitations would make the use of such equipment unfeasible, a design, operational standard, management practice, or some combination thereof may be substituted to meet the intent of this provision.

For any applications where petroleum products are to be used, a spill prevention control plan shall be provided with the application.

Documentation shall include both plan and cross-sectional views and either schematic or photographic renderings of the generalized layout of the equipment as depicted from two vantage points on the water. The location of the vantage points from the proposed lease area shall be included in the application.

The application shall also include information on the anticipated typical number and type of vessels that will service the proposed site, including the frequency and duration of vessel traffic.

#### 4. Completion

- A. Upon receipt of a written application, the applicant shall receive notice by the Department that the application was received. Within 30 working days of receipt of a written application, the Commissioner shall:
  - (1) Determine whether the application is complete, containing sufficient information in which a decision regarding the granting of the application may be taken, and notify the applicant of his determination. If the application is incomplete, it shall be returned to the applicant with a written explanation of the additional information required in order to be complete.
  - (2) When the application is complete, the Commissioner will make a determination whether the application could be granted and whether the applicant has the financial and technical capability to carry out the proposed activity. If the Commissioner makes both determinations in the affirmative, he or his designee shall schedule a hearing on the application. If the Commissioner or his designee determines either that the application



could not be granted or the applicant lacks the necessary financial or technical capacity the applicant shall be notified in writing of that determination and no further Department action on the application is required.

## 5. Proposed Site Marking

At least 30 days prior to the proposed hearing date, the applicant shall place visible markers which delineate the area proposed to be leased.

## 2.12 Multiple Ownership

1. Corporate Applicants. Corporate applicants for aquaculture lease(s) shall include the following information in their application:
  - A. The date and state in which incorporated and a copy of the Articles of Incorporation;
  - B. The names, addresses, and titles of all officers;
  - C. The names and addresses of all directors;
  - D. Whether the corporation, or any stockholder, director or officer has applied for an aquaculture lease for Maine lands in the past, and the outcome or current status of that application or lease;
  - E. The names and addresses of all stockholders who own or control at least 5% of the outstanding stock and the percentage of outstanding stock currently owned or controlled by each such stockholder;
  - F. The names and addresses of stockholders, directors or officers owning an interest, either directly or beneficially, in any other Maine aquaculture leases, as well as the quantity of acreage from existing aquaculture leases attributed to each such person under paragraph 3 below; and
  - G. Whether the corporation or any officer, director, or shareholder listed pursuant to Chapter 2.12 (1)(E) has ever been arrested, indicted or convicted of or adjudicated to be responsible for any violation of any marine resources or environmental protection law, whether state or federal.
2. Partnership Applicant. Partnership applicants for aquaculture lease(s) shall include the following information in their application:
  - A. The date and state in which the partnership was formed and a copy of either the Certificate of Limited Partnership or documentation of the formation of a General Partnership,
  - B. The names, addresses, and ownership shares of all partners;
  - C. Whether the partnership or any partner has applied for an aquaculture lease for Maine lands in the past and the outcome or current status of that application or lease;
  - D. Whether the partnership or any partner owns an interest, either directly or beneficially, in any other Maine aquaculture leases as well as the quantity of acreage from existing aquaculture leases attributed to the partnership or partner under paragraph 3 below;
  - E. Whether the partnership or any partner has been arrested, indicted or convicted of or adjudicated to be responsible for any violation of marine resources or environmental protection law, whether state or federal.

### 3. Aquaculture Lease Acreage

No lease may be granted that results in a person being a tenant of any kind in leases covering an aggregate of more than 1,000 acres. For the purposes of calculating ownership of aquaculture lease acreage, the amount of acreage leased by a corporation or partnership will be attributed to the partnership or corporation and collaterally to shareholders in the corporation or partnership as individuals at a rate equal to the shareholders' ownership in the corporation or partnership. For example, if a corporation holds an aquaculture lease of 100 acres and two people own 50% stock interest in the corporation, the corporation will be credited with leasing 100 acres and each individual will be deemed to hold 50 aquaculture lease acres.

## 2.15 Notice of Lease Application and Hearing

### 1. Notice of Completed Application

At the time that an application is determined to be complete in accordance with Chapter 2.10(4), the Department shall make a copy of the completed application available to the known riparian owners within 1,000 feet of the proposed lease and to the officials of the municipality or municipalities, including the harbormaster if applicable, in which the proposed lease would be located, or the proposed lease abuts, as listed on the application.

### 2. Personal Notice of Public Hearing

At least 30 days prior to the date of the public hearing, the Department shall mail a copy of the notice of hearing and make copies of the lease application and the Department site report available, to the following persons:

- A. Riparian owners as listed in the application;
- B. The municipality or municipalities in which the lease area is located, or the proposed lease abuts;
- C. The applicant; and
- D. Any public agency the Department determines should be notified, including but not limited to, State Planning Office, Department of Environmental Protection, Department of Conservation, Department of Inland Fisheries and Wildlife, Regional Planning Office, United States Coast Guard, and United States Army Corps of Engineers.

### 3. Public Notice of Public Hearing

The Department shall publish a notice of the public hearing at least twice in a newspaper of general circulation in the area affected unless otherwise prescribed by the Maine Administrative Procedure Act. Such notice shall be published once at least 30 days prior to the hearing and a second time at least 10 days prior to the hearing. Notice of the public hearing shall also be published in a trade, industry, professional or interest group publication which the Department deems effective in reaching persons who would be entitled to intervene.

Public notice shall include the following information:

- A. a statement of the legal authority under which the proceedings are being conducted, including reference to the Administrative Procedures Act, 5 M.R.S.A. §9051 et seq. and the aquaculture lease provisions of 12 M.R.S.A. §6072;

- B. a short, plain statement of the nature and purpose of the proceeding and the nature of the aquaculture lease application;
- C. a statement of the time and place of the hearing;
- D. a statement of the manner and time within which applications for Intervention may be filed; and
- E. a statement of the manner and time within which evidence and argument may be submitted to the Department for consideration.

The Department shall also distribute press releases regarding the public hearing to print media outlets serving the area of the proposed lease application at least two weeks prior to the public hearing.

## 2.20 Intervention

### 1. Forms

The Commissioner shall on request supply application forms for intervenor status and require the submission of the following information:

- A. The identity of intervenor applicant;
- B. A description of the manner in which the intervenor applicant may be substantially and directly affected by the granting of an Application. This description shall include information describing the intervenor applicant's existing use of the proposed lease area. In the event that the applicant is not a member of a class which may be substantially and directly affected by the proceeding, the applicant shall describe any other interest he may have in the lease proceeding which merits Department approval of his intervenor status; and
- C. A description of intervenor applicant's objections, if any, to the proposed aquaculture lease.

### 2. Filing of Applications

Any application for intervenor status must be filed in writing and received by the Department at least 10 days prior to the hearing. The Commissioner may waive the 10 day deadline for good cause shown.

### 3. Participation Limited or Denied

At least 5 days prior to the hearing, the Commissioner shall decide whether to allow or refuse intervenor applications. The Commissioner shall provide written or oral notice of his decision to the intervenor applicant and all other parties to the proceeding. When participation of any intervenor is limited or denied, the Commissioner shall include in the hearing record an entry noting his decision and the reasons therefore.

- A. Full Participation. The Commissioner shall approve intervenor status for any person who is substantially and directly affected by the granting of an aquaculture lease application, and for any other agency of federal, state, or local government.
- B. Limited Participation. The Commissioner may grant limited intervenor status to an intervenor applicant where the Commissioner determines that the applicant has a lesser interest than that necessary for full intervenor status but whose participation as a limited intervenor is warranted or would be helpful to the Commissioner in his decision making. The Commissioner may also grant limited intervenor status when the applicant has an interest in

the proceeding and where the Commissioner determines that the applicant's interest or evidence to be offered would be repetitive or cumulative when viewed in the context of the interest represented or evidence to be offered by other intervenors. The Commissioner shall describe the manner in which a limited intervenor is permitted to participate in the adjudicatory process in his written notification of the granting of such status.

- C. Consolidation. The Commissioner may require the consolidation of two or more intervenors' testimony, evidence and questioning if he determines that it is necessary to avoid repetitive or cumulative evidence or questioning.
- D. Correspondence of Parties. Once admitted as an intervenor, whether full or limited, the intervenor applicant shall be considered a party to the proceeding. Each party shall provide copies of all correspondence with the Department to all other parties and will be notified of all communications between the Department and other parties to the aquaculture lease proceedings.

#### 2.25 Agency File

- 1. Upon receipt of an aquaculture lease application, the Commissioner shall open an agency file, which shall include all written correspondence from parties and non-parties concerning the application and memoranda of oral communications between the department and parties and non-parties concerning the lease application.
- 2. Public Inspection  
The agency file shall be open for public inspection by prior appointment during normal business hours. The Department will supply copies of the file contents to any person for a charge according to the Department schedule.

#### 2.27 Department Site Review

- 1. On site Inspection
  - A. An inspection of the proposed aquaculture site and the immediate surrounding area will be conducted by the Department. The site must be marked as referenced in Chapter 2.10(5) by the applicant.
  - B. Information obtained on site will include but will not necessarily be limited to bottom composition, depth and features; typical flora and fauna; relative abundance of commercial and recreational species; evidence of fishing activity; distances to shore; and navigation channels and moorings.
- 2. Documented Information

Site specific documented information which is available will be assembled and included in the Department report, including verification of the location of the proposed lease boundaries, distances to shore, navigational channels and moorings, tide, current, and temperature data, patterns of ice formation and flows, location of shellfish beds, observed fishing activity in and around the proposed site, and the location of any municipally, state, or federally owned beaches, parks, or docking facilities within 1,000' of the proposed lease. The description and location of existing or proposed aquaculture lease sites within the area will be included. For the purpose of this report the area shall be considered to be a river, bay, estuary, embayment, or some other appropriate geographical area in order to adequately consider the potential impact of the amount and density of existing aquaculture activities and the proposed application.

The Department shall determine whether or not to verify the applicant's water quality information (tide, current, salinity, dissolved oxygen) through its own measurements. If the applicant's

information is deemed to be adequate for review, then the water quality section of the report may be waived.

The Department shall conduct an adequate number of dives or remote video transects to substantiate benthic conditions and substrate characteristics as submitted by the applicant. The Department reserves the right to request additional information of the applicant in the event that the information in an application is found to be insufficient or inadequate for review.

If a proposed lease site is located in a jurisdiction that employs a harbormaster, the Department shall request information from the municipal harbormaster about designated or traditional storm anchorages, navigation, riparian ingress and egress, fishing or other uses of the area, ecologically significant flora and fauna, beaches, parks, and docking facilities in proximity to the proposed lease.

## 2.29 Prehearing Conference

The Commissioner may require parties to attend a prehearing conference if the complexity of the issues or volume of evidence indicates that a prehearing conference would aid in the determination of issues raised by the application. The Commissioner may issue a prehearing order which sets forth the procedure to be followed by the parties with regard to such issues as the pre-filing of testimony, the conduct of the hearing and the closure of the record.

## 2.30 Aquaculture Lease Hearing Procedures

### 1. Presiding Officer

- A. The presiding officer at any aquaculture lease hearing shall be either the Commissioner or a Department employee or representative designated by the Commissioner to act as hearing officer.
- B. The presiding officer shall have the authority to:
  - (1) rule upon issues of evidence and procedure;
  - (2) regulate the course of the hearing;
  - (3) certify questions to the Commissioner for his determination;
  - (4) administer oaths; and
  - (5) take such other action as may be necessary for the efficient and orderly conduct of the hearing, consistent with these regulations and applicable statutes.
- C. The presiding officer may permit deviation from these procedural regulations for good cause shown, in so far as compliance is found to be impracticable or unnecessary.

### 2. General Conduct

- A. Opening Statement. The presiding officer shall open the hearing by describing in general terms the purpose of the hearing and the general procedure governing its conduct.
- B. Record of Testimony. All testimony at aquaculture lease hearings shall be recorded and, if necessary for judicial review, transcribed.
- C. Witnesses. All witnesses must be sworn and will be required to state his/her name, residence, and whom, he/she represents, if anyone, for the purpose of the hearing.

- D. Testimony in Written Form. At any time prior to or during the course of the hearing, the presiding officer may require that all or part of the testimony to be offered at the hearing be filed with the Department in written form at a prescribed time prior to the hearing. All such pre-filed written testimony must be sworn and all persons offering sworn testimony in written form must be present at the hearing and subject to cross-examination. This subsection shall not be construed to prevent oral testimony at a scheduled hearing by any member of the public who is not a party or affiliated with a party.

### 3. Continuance

All hearings conducted pursuant to these regulations may be continued by the presiding officer for reasonable cause and reconvened from time to time and place to place by the presiding officer. The presiding officer shall provide reasonable notice to the parties and the public of the time and place of such reconvened hearing.

### 4. Cameras and Microphones

The placement and use of television cameras, still cameras, motion picture cameras, microphones and other recording devices may be regulated by the presiding officer to ensure the orderly conduct of the hearings.

## 2.31 Evidence

1. Evidence which is relevant and material to the subject matter of the hearing, and is of the type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible. Evidence which is irrelevant, immaterial or unduly repetitious may be excluded. The Department's experience, technical competence and specialized knowledge may be utilized in the evaluation of all evidence submitted.
2. The presiding officer may take official notice of any facts of which judicial notice could be taken, and in addition may take official notice of general, technical, or scientific matters within the Department's specialized knowledge as well as statutes, regulations and non-confidential agency records. When facts are noticed officially, the presiding officer shall state the same during the hearing or otherwise notify all parties and they shall be able to contest the substance or materiality of the facts noticed. Facts officially noticed shall be included and indicated as such in the hearing record.
3. Documentary and Real Evidence
  - A. All documents, materials and objects offered and accepted as evidence shall be numbered or otherwise identified and included in the record. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. The presiding officer may require any person offering documents or photographs as exhibits to submit a specified number of copies unless the document or photograph is determined to be unsuitable for reproduction.
  - B. All written testimony and documents, materials and objects submitted into evidence shall be made available during the course of the hearing for public examination. All hearing evidence shall also be available for public examination upon prior appointment at the Department of Marine Resources in Hallowell during normal business hours.
  - C. The agency file containing the application and agency correspondence shall be submitted as documentary evidence in the hearing record.
4. Objections

All objections to rulings of the presiding officer concerning evidence or procedure and the grounds therefore shall be timely stated during the course of the hearing. During the course of the hearing or after the close of the hearing, the Commissioner may determine that the ruling of the presiding officer was in error and order the hearing reopened or take any other action he deems appropriate to correct the error.

#### 5. Offer of Proof

An offer may be made in connection with an objection to a ruling of the presiding officer excluding any testimony or question on cross-examination. Such offer of proof shall consist of a statement of the substance of the proffered evidence.

#### 6. Public Participation

Any person may participate in a hearing by making oral or written statements explaining his position on the issues, and may submit written or oral questions to the parties through the presiding officer, within such limits and upon such terms and conditions as may be fixed by the presiding officer.

#### 7. Testimony at Hearings

A. Order of Presentation. Unless varied by the presiding officer, hearing testimony shall be offered in the following order:

- (1) Direct evidence by applicant and applicant's witnesses in support of the application.
- (2) Testimony by Department staff and consultants.
- (3) Testimony by members of federal, state and local agencies.
- (4) Direct evidence by intervenors supporting the application.
- (5) Direct evidence by intervenors opposing the application.
- (6) Testimony by members of the public.

B. Questions. At the conclusion of his/her testimony each witness may be questioned in the order described below. The presiding officer may require that questioning of witnesses be conducted only after the conclusion of testimony by an entire category of witnesses for the purposes of efficiency or clarity of record.

- (1) The presiding officer, legal counsel and Department staff may question witnesses at any time.
- (2) The applicant.
- (3) Federal, state and local agency representatives.
- (4) Intervenors.
- (5) At the discretion of the hearing officer, all other members of the public may have the opportunity to question witnesses directly or by oral or written questions through the presiding officer.

#### 8. Conclusion of Hearing

- A. At the conclusion of the hearing the record shall be closed and no other evidence or testimony will be allowed into the record, except by stipulation of the parties or as specified by the presiding officer.
- B. The Commissioner may re-open the hearing record after it has been closed to take additional evidence on specific issues where the Commissioner is not satisfied that he has all of the information before him necessary to make a decision.

#### 9. Record

A full and complete record shall be kept for each aquaculture lease application proceeding. The record shall include, but shall not be limited to, the application, supporting documents, all exhibits, proposed findings of facts and conclusions of the presiding officer, if any, staff documents, the Commissioner's findings of facts and conclusions, and a recording or transcript of the hearing.

#### 2.35 Hearing Officer Report

1. In the event that an aquaculture lease hearing is conducted by a hearing officer other than the Commissioner, the hearing officer may prepare a report, including proposed findings of fact, conclusions of law and, at the Commissioner's request, a recommended decision. A copy of the hearing officer's report shall be provided to each party and each party shall have an opportunity to file responses or exceptions to the report within 10 days following receipt of the report.
2. In submitting responses and exceptions, parties may submit a petition to the hearing officer to correct mis-statements of fact in the report. The hearing officer may correct any mis-statements of fact in his report prior to submission of the report to the Commissioner.
3. The report shall be submitted to the Commissioner with the parties' responses and exceptions.
4. Nothing in this section shall prevent the Commissioner from reaching his decision based solely on the record, after review of the hearing tape or transcript and after review of the hearing record.

#### 2.37 Decision

1. After review of the agency record, the Commissioner shall issue a written decision, complete with findings of fact and conclusions of law.

The Commissioner may grant an aquaculture lease if he is satisfied that the proposed project meets the conditions outlined by 12 M.R.S.A. §6072 (7-A).

- A. Standards: In making his decision the Commissioner shall consider the following with regard to each of the statutory criteria:
  - (1) Riparian Owners Ingress and Egress. The Commissioner shall examine whether the riparian owners can safely navigate to their shore. The Commissioner shall consider the type of shore involved and the type of vessel that can reasonably land on that shore. He/she shall consider the type of structures proposed for the lease and their potential impact on the vessels which would need to maneuver around those structures.
  - (2) Navigation. The Commissioner shall examine whether any lease activities requiring surface and or subsurface structures would interfere with commercial or recreational navigation around the lease area. The Commissioner shall consider the current uses and different degrees of use of the navigational channels in the area in determining



the impact of the lease operation. For example: A lease area adjacent to the usual course of a barge in tow shall be held to a stricter standard than one in an area frequented by only outboard skiffs. High tide "short cuts" shall not be considered navigational ways for the purposes of this section.

- (3) Fishing. The Commissioner shall examine whether the lease activities would unreasonably interfere with commercial or recreational fishing or other water-related uses of the area. This examination shall consider such factors as the number of individuals that participate in recreational or commercial fishing, the amount and type of fishing gear utilized, the number of actual fishing days, and the amount of fisheries resources harvested from the area.
- (4) Other Aquaculture Uses. The Commissioner shall consider any evidence submitted concerning other aquaculture uses of the area. The intensity and frequency of such uses as well as the degree of exclusivity required for each use shall be factors in the Commissioner's determination of whether any interference is unreasonable. The number, size, location, and type of other aquaculture leases shall be considered by the Commissioner.
- (5) Existing System Support. The Commissioner shall consider the degree to which the use of the lease site will interfere with significant wildlife habitat and marine habitat or with the ability of the lease site and marine and upland areas to support ecologically significant flora and fauna. Such factors as the degree to which physical displacement of rooted or attached marine vegetation occurs, the amount of alteration of current flow, increased rates of sedimentation or sediment resuspension, and disruption of finfish migration shall be considered by the Commissioner in this determination.
- (6) Source of Organisms to be Cultured. The Commissioner shall include but not be limited to, consideration of the source's biosecurity, sanitation, and applicable fish health practices.
- (7) Interference with Public Facilities. The Commissioner shall consider the degree to which the lease interferes with public use or enjoyment within 1,000 feet of a beach, park, docking facility or certain conserved lands owned by the Federal Government, the State Government or a municipal government. Conserved lands means land in which fee ownership has been acquired by the state, federal or municipal government in order to protect the important ecological, recreational, scenic, cultural or historic attributes of that property. Leases may not unreasonably interfere with public use or enjoyment of such beaches, parks, docking facilities, or conserved lands. In determining interference with the public use or enjoyment of conserved lands, the Commissioner shall consider the purpose(s) for which the land has been acquired.

#### (8) Lighting

**Applicability.** These rules apply to all exterior lighting used on buildings, equipment, and vessels permanently moored or routinely used at all aquaculture facilities, with the exception of lighting for navigation, emergencies, and construction of a temporary nature.

**Exterior lighting.** All exterior lighting shall be mounted in cutoff fixtures. A cutoff fixture is one that projects no more than 2.5% of light above the horizontal plane of the light fixture's lowest part. This does not include spotlights or floodlights, which are addressed below.

All exterior lighting shall be designed, located, installed, and directed in such a manner as to illuminate only the target area and to reduce glare.

Exterior lighting shall be no more than 250 watts per fixture, with the exception of required navigational lighting, spotlights and floodlights.

When harvest schedules, feed schedules, or other similar circumstances result in the need to work beyond daylight hours, spotlights or floodlights may be used to ensure safe working conditions and safe vessel operation. Such lighting shall be directed only at the work area to be illuminated, and must be the minimum needed for safe operations.

If used, all husbandry lighting shall be submersible and operated at all times below the water line, except during examination for maintenance and repair.

When necessary, security lighting may be used, but shall conform to the requirements for exterior lighting.

An applicant shall demonstrate that all reasonable measures will be taken to mitigate light impacts from the lease activities.

No provision in these rules is intended to restrict vessel lighting levels below what is necessary for safety or as is otherwise required by state or federal law.

#### (9) Noise

Applicability. These rules apply to the routine operation of all aquaculture facilities, including harvesting, feeding, and tending equipment at leases authorized by the Department of Marine Resources, with the following exemptions:

- Watercraft, harvest or transport barges, and maintenance equipment while underway;
- The unamplified human voice and other sounds of natural origin;
- Bells, whistles, or other navigational aids;
- Emergency maintenance and repair of aquaculture equipment;
- Warning signals and alarms; and
- Events not reasonably within the control of the leaseholder.

Mitigation:

All motorized equipment used during routine operation at an aquaculture facility must be designed or mitigated to reduce the sound level produced to the maximum extent practical.

Centralized feeding barges, or feeding distribution systems, shall be designed or mitigated to reduce noise by installing the most effective commercially available baffles at air intakes and outlets, mounting of all relevant equipment to minimize vibration between it and the hull, and using the most effective commercially available soundproofing insulation.

All fixed noise sources shall be directed away from any residences or areas of routine use on adjacent land.

An applicant shall demonstrate that all reasonable measures will be taken to mitigate noise impacts from the lease activities.

## (10) Visual Impact

**Applicability.** This rule applies to all equipment, buildings, and watercraft used at an aquaculture facility, excluding watercraft not permanently moored or routinely used at a lease location such as harvest or feed delivery vessels. Other equipment or vessels not moored within the boundaries of a lease, but routinely used or owned by the leaseholder are subject to these requirements.

**Building profiles.** The size, height, and mass of buildings and equipment used at aquaculture facilities shall be constructed so as to minimize the visual impact as viewed from the water.

**Height limitations.** All buildings, vessels, barges, and structures shall be no more than one story and no more than 20 feet in height from the water line. Height shall be measured from waterline to the top of the roof or highest fixed part of the structure or vessel. This height limitation excludes antennae, cranes, and other similar auxiliary equipment. Structures that exist or are under construction as of the effective date of this rule are exempted from the height restriction for their useful lifetime.

**Roof & siding materials.** Roofing and siding materials shall not be reflective or glossy in appearance or composition.

**Color.** Equipment and structures shall be painted, or be of, a color that does not contrast with the surrounding area. Acceptable hues are grays, blacks, browns, blues, and greens that have a sufficiently low value, or darkness, so as to blend in with the surrounding area. Colors shall be flat, not reflective, in appearance.

The color of equipment, such as buoys, shall not compromise safe navigation or conflict with US Coast Guard Aids to Private Navigation standards.

## B. Conditions

The Commissioner may establish conditions that govern the use of the leased area and limitations on the aquaculture activities. These conditions shall encourage the greatest multiple, compatible uses of the leased area, but shall also address the ability of the lease site and surrounding area to support ecologically significant flora and fauna and preserve exclusive rights of the lessee to the extent necessary to carry out the lease purpose. A harbormaster and/or a municipal officer or other designee of the municipality in which the proposed lease is predominantly located may recommend that the Commissioner establish conditions on a proposed lease in writing to the Department during the comment period. The Department shall consider any conditions recommended by the municipality, and the Department shall provide a written explanation to the municipality at the time a proposed decision is written if any of the requested conditions will not be included in the lease.

The Commissioner may grant the lease on a conditional basis until the lessee has acquired all the necessary federal, state and local permits. The Commissioner may require environmental monitoring of a lease site (see Chapter 2.40(7)) and may establish any reasonable requirements to mitigate interference, including but not limited to restrictions on:

- (1) specific stocking limits, feeding requirements, husbandry techniques and harvesting methods;
- (2) the size and shape of gear, nets, or enclosures;
- (3) the deployment and placement of gear; and

- (4) the timing of various project operations.
- 2. The Commissioner's denial or approval of a lease application shall be considered final agency action for purposes of judicial review.
- 3. Within 120 days after the hearing on an application, the Commissioner shall render a final decision, unless the applicant agrees to a longer time.

#### 2.40 Lease Issuance

- 1. Prior to issuing a lease, the Department shall send a draft lease for review to the applicant.
- 2. Applicant Responsibilities. Within 30 days of the Commissioner's decision and prior to issuance of the lease, the applicant must complete the following requirements:
  - A. establish an escrow account or secure a performance bond in the amount required by the Department in the draft lease. The amount is to be determined by the nature of the aquaculture activities proposed for the lease site as follows:

##### Category of Aquaculture Lease:

No structure, no discharge	\$ 500.00
No structure, discharge	\$ 500.00
Structure, no discharge	Total combined area of all structures on lease:
≤400 square feet	\$1,500
>400 square feet	\$5,000
Structure, discharge	\$25,000

A single performance bond for a structure, discharge lease may be held to meet lease obligations for up to no more than 5 individual leases retained by a leaseholder.

The Department may prorate the performance bond amount for a structure, no-discharge lease where structures are in excess of 2,000 square feet in order to increase the bonding requirement to satisfy the requirements of these rules.

- B. pay the rental fee due for the first year of the lease term.
- 3. Immediately following, but not before signing of the lease by the Department and the applicant, the lessee must complete the following requirements:
  - A. file the lease or a memorandum of lease in the Registry of Deeds of the county in which the lease tracts are located, and
  - B. publish notice of the lease issuance in the newspapers in which the aquaculture lease hearing notices originally appeared, following Department approval of the notice.
- 4. Compliance
 

Failure to maintain an escrow account or performance bond, to pay rental fees in a timely manner, or failure to comply with the terms of the lease, these regulations or any applicable laws shall be grounds for lease revocation under Chapter 2.42.
- 5. Lease Term and Validity

The term of the lease shall run from the date of the Commissioner's decision but no aquaculture rights shall accrue in the lease area until the lease is signed.

## 6. Other Licenses

The lease holder is responsible for obtaining any requisite licenses and special licenses from the Department prior to beginning operations.

Persons who are issued an aquaculture lease pursuant to 12 M.R.S.A. §6072 for shellfish must also comply with DMR regulations Chapters 2.95, 9 and / or 15, 21 and 23 in accordance with the National Shellfish Sanitation Program Model Ordinance for the sanitary control of shellfish and Chapter 24.

## 7. Environmental Monitoring

The Commissioner may require that environmental monitoring be conducted on lease sites. Such monitoring shall: be conducted by the applicant or the applicant's agent; be undertaken on a schedule to be determined by the Commissioner; and shall include the information designated by the Commissioner in the lease decision, which may include, but is not limited to, an analysis of water chemistry phytoplankton, zooplankton, and fish larvae profiles. The results of such monitoring shall be summarized in a written report and submitted to the Department within 90 days of completion of each study.

### 2.41 Competing Aquaculture Lease Applications

1. To qualify as a competing application under subsections 2 and 3, an application must be accepted by the Department prior to the publication of the first public notice of hearing to consider a previously filed lease application for identical or overlapping lease areas.
2. In the event the Department receives competing aquaculture lease applications for a lease site, the Department shall give preference in granting a lease as follows:
  - A. first to the Department;
  - B. second, to the riparian owner of the intertidal zone within the leased site area;
  - C. third, to fishermen who have traditionally fished in or near the proposed lease area; and
  - D. fourth, to the riparian owner within 100 feet of the territorial waters proposed to be leased.
3. If the Department receives competing applications which are either in the same preference category as outlined in Chapter 2.41(2), or which are not in any preference category, the applications shall be considered sequentially according to the date on which the application was deemed complete by the Commissioner pursuant to Chapter 2.10(4)(A)(1) of these regulations.
4. Except as described in Chapter 2.41(3) above, when the Department receives competing applications, it shall schedule one hearing to consider the applications concurrently.

### 2.42 Annual Lease Review and Revocation

The Commissioner shall conduct an annual review of each aquaculture lease.

1. If the Commissioner determines following an annual review or at any other time that the applicant has conducted substantially no research or aquaculture depending on the purpose of the lease within the preceding year, that the aquaculture or research within the aquaculture lease area has

been conducted in a manner substantially injurious to marine organisms, or that any other lease condition or the terms of these regulations or any applicable law has been violated, he may revoke the lease.

2. Unless the leaseholder waives the same, the Commissioner shall hold an adjudicatory hearing to consider revocation of a lease, subject to the notice and hearing procedures set forth in these regulations.

#### 2.43 Lease Rent

Rent shall be payable hereunder as follows:

Fifty dollars (\$50) per acre per year for the first two years of the term of new leases for the bottom culture of blue mussels. This discount only applies to leases which are the result of new lease applications declared complete by DMR during the calendar years 2009, 2010, and 2011. Beginning with the third year of the term of the lease, the standard lease rent of one hundred dollars (\$100) per acre per year will apply.

One hundred dollars (\$100) per acre, per year for all other leases.

All rent is payable on or before October 1 of each year throughout the term of the lease.

#### 2.44 Lease Amendments for Adding or Deleting Species

1. Requests for amending leases for adding or deleting species grown at a lease site must be submitted on forms prescribed by the Commissioner.
2. A leaseholder who seeks a species amendment that will result in a change to the original lease conditions or alters the intent of the original decision shall file an application for an aquaculture lease pursuant to Chapter 2.10.

#### 2.45 Lease Renewal

1. A lessee must file with the Department an application to renew a lease at least 90 days prior to the lapse of the lease. The application shall include a nonrefundable application fee of \$1,000 for non-discharge leases and \$1,500 for discharge leases, and shall include information on the type and amount of aquaculture to be conducted during the new lease term. A lease issued for scientific research pursuant to 12 M.R.S.A. §6072-A is exempt from the renewal fee requirements in this section.
2. Renewal of a lease shall be an adjudicatory proceeding with notice as provided by these regulations, except that no hearing is required unless it is requested, in writing, by five or more interested persons.
3. The Commissioner shall grant a lease renewal if:
  - A. the lessee has complied with the lease agreement during the term of the lease;
  - B. the lease is not being held for speculative purposes. Consideration of speculative purposes includes whether the lessee has conducted substantially no research or aquaculture in the lease areas during the previous lease term;
  - C. the Commissioner determines that it is in the best interest of the state to renew the lease. Consideration of the best interest of the state may include, but shall not be limited to, conflict with other new or existing uses of the area which the Commissioner determines to be a higher use of the area from the perspective of the public interest; and

- D. the renewal will not cause the lessee to become a tenant of any kind in leases covering an aggregate of more than 1000 acres.

#### 2.46 Following

The Commissioner may require a person to submit an annual following plan and a reassessment schedule and may approve them, reject them, or request changes. Revisions to the plan must be submitted in accordance with the reassessment schedule unless the Commissioner authorizes an exception due to extraordinary circumstances. A lease site followed pursuant to an enforcement action may not be considered followed for the purpose of this section.

#### 2.60 Lease Transfer

1. Application. A lessee, on a form supplied by the Commissioner, may apply for Department approval of the transfer of his aquaculture lease to another person for the remaining portion of the lease term. The lessee must pay the transfer fee of \$2,500 for non-discharge leases and \$5,000 for discharge leases prior to the execution of the new lease. The Commissioner may waive the application fee if the applicant demonstrates that the transfer is to the applicant's parent, spouse, sibling or child. Multiple transfers of one lease that have the effect of circumventing the application fee are not permitted.
2. Procedure. A lease transfer is not an adjudicatory proceeding. The Department shall send a notice of the proposed transfer to the public, the owners of riparian land within 1,000 feet of the lease site, and the municipal officers of the municipality in which the lease is located. The notice shall state that the public, riparians, and municipal officials may provide comments to the Department on the proposed renewal within 14 days of the date of the notice.
3. Decision. The Commissioner may grant the lease transfer if it is determined that:
  - A. the change in lessee's identity does not violate any of the lease issuance criteria set forth in 12 M.R.S.A. §6072(7-A);
  - B. the lease transfer is not intended to circumvent the preference guidelines for treatment of competing applications as set forth in 12 M.R.S.A. §6072(8);
  - C. the lease transfer is not for speculative purposes. Consideration of speculative purposes includes whether the current lessee has conducted substantially no research or aquaculture in the lease areas during the previous lease term; and
  - D. the transfer will not cause the transferee to be a tenant of any kind in leases covering an aggregate of more than 1,000 acres.

#### 2.64 Experimental Aquaculture Lease

1. The Commissioner may grant an experimental lease pursuant to 12 M.R.S.A. §6072-A for areas in, on and under the territorial waters including the public lands beneath those waters and portions of the intertidal zone for commercial aquaculture research and development or for scientific research.
2. Experimental Aquaculture Lease Application Requirements
  - A. Form. Experimental aquaculture lease applications must be submitted on forms prescribed by the Commissioner and must contain all information required by the Commissioner for consideration of the lease.

- B. Fee. An application shall not be considered complete until a nonrefundable application fee has been paid for in cash or by certified check. The application fee for an experimental lease application shall be \$100.
- C. Required elements:
- (1) The lease applicant's name, address, home and business phone number of the applicant, and, if applicable, the location and Department number of any emergency lease which may be held on the area for which the experimental lease is being applied.
  - (2) A description of the proposed lease by coordinates or boundaries with coordinates for one starting point (metes and bounds), total acreage, a map of the lease area and the adjoining waters and shoreline, with a certified list of names and addresses of riparian owners indicated on the map as listed in the municipal tax records.
  - (3) A description of the research or development study to be conducted on the site. The description must include: the purpose and design of the study; the type, amount and proposed source of organisms to be grown; a drawing of any structures that will be used; a description of the culture and harvesting techniques that will be used; and the expected length of the study. The description shall also indicate whether the research is for commercial research and development or for scientific purposes.
  - (4) A description of the degree of exclusive use required by the project.
  - (5) A description of existing uses of the proposed lease area, including commercial and recreational fishing activity, moorings, navigation and navigational channels, and use of the area by riparian landowners for ingress and egress. The description shall include the type, volume, time, duration, location and amount of activity. A signed statement from a Department biologist or Marine Warden may be submitted to verify this information.
  - (6) The written permission of every owner of intertidal land in, on or over, which the experimental activity will occur. If private property is to be used for access, written permission from the property owner must be provided with the application.
  - (7) A general description of the area including major physical and biological features, including the flora and fauna of the area (i.e., type of bottom, presence of eelgrass beds, shellfish beds, etc.) as well as the general shoreline and upland characteristics (i.e., sand beach, rocky headland, saltmarsh).
- In lieu of a written description, applicants may submit a clear and decipherable video (or a Department approved alternative) of the bottom of the proposed lease site and the surrounding shoreland using a transect methodology approved by the Department. Applications that involve a discharge must be filmed between April 1 and November 15 unless otherwise specified by the Department. Applications that do not involve a discharge may be filmed at any time of year, unless otherwise specified by the Department.
- D. Submission of material used for an experimental lease application. An applicant who has an active emergency lease issued by the Department may use the relevant information in that application for satisfying the requirements of an experimental lease application, if the experimental lease is in the same location and of the same dimension as the emergency lease. If the Commissioner determines that the information is not sufficient for the purposes of granting an experimental lease, the applicant must submit additional information to fulfill the application requirements.



- E. Completion. Upon receipt of a written application, the Department shall notify the applicant of its receipt. Within 20 working days of receipt of a written application, the Commissioner shall determine whether the application is complete and contains sufficient information on which a decision regarding the granting of the application may be made. The Commissioner shall notify the applicant of his/her determination. If the application is incomplete, it shall be returned to the applicant with a written explanation of the additional information required in order to be complete.
  - F. Proposed Site Marking. During the time period when the application is being considered by the Department, the applicant must place visible markers to delineate the area proposed to be leased.
3. Department Site Review. The Department shall inspect the proposed site and immediate areas to obtain or verify information such as: the location of proposed lease boundaries; the general characteristics of the area, including bottom composition, depth and features; typical flora and fauna; numbers or relative abundance of commercial and recreational species; evidence of fishing activity; distances to shore; navigation channels; moorings; locations of any municipally, state, or federally owned beaches, parks, or docking facilities within 1,000' of the proposed lease site; and the amount and density of all other aquaculture activity in the area. For the purpose of this review, the area shall be considered to be a river, bay, estuary, embayment, or some other appropriate geographical area in order to adequately consider the potential impact of the amount and density of existing aquaculture activities and the proposed application.

If a proposed lease site is located in a jurisdiction that employs a harbormaster, the Department shall request information from the municipal harbormaster about designated or traditional storm anchorages, navigation, riparian ingress and egress, fishing or other uses of the area, ecologically significant flora and fauna, beaches, parks, and docking facilities in proximity to the proposed lease.

4. Notice of Application and Comment Period.

A. Notice of Completed Application

At the time that an application is determined complete in accordance with 2.64(2)(E), the Department shall make a copy of the completed application available to the known riparian owners within 1,000 feet of the proposed lease and to officials of the municipality or municipalities in which the proposed lease would be located, or the proposed lease abuts, as listed on the application.

B. Public Scoping Session

The Department shall determine whether or not to conduct an informal public scoping session on the aquaculture lease application. Any public scoping session would be held in the municipality in which the proposed lease is located and be scheduled prior to the Department's site work. The purpose of a public scoping session shall be to familiarize the general public with the content of the application, to allow the public an opportunity to ask questions of the applicant and the Department, and to provide the Department with information that can be used during field work or agency review of an application.

The applicant is required to attend and participate in a public scoping session on their application when one is held.

The Department shall provide notice of the scoping session to riparian landowners within 1,000' of the proposed lease as indicated in the application, and to officials of the municipality or municipalities in which the proposed lease would be located, or the proposed lease abuts. All other interested individuals or parties may request to be placed on the Department's

service list for notification of these meetings or other proceedings relating to the processing of aquaculture lease applications.

The Department will issue a press release to the print media regarding the public scoping session and shall also publish a notice in papers of general circulation in the area of the proposed lease.

#### C. Comment Period

Any person may provide the Commissioner with written comments on the experimental lease application. At least 30 days prior to the deadline for comments, the riparian landowners listed in the application and the municipality or municipalities in which the proposed lease would be located, or the proposed lease abuts, shall receive a summary of the application, a statement of the manner and time within which comments may be submitted to the Department and the process for requesting a public hearing. At least 30 days prior to the deadline for comments, the Department shall publish a summary of the application in a newspaper of general circulation in the area proposed for an experimental lease.

5. **Public Hearing.** The Department may hold a public hearing on the proposed experimental lease. If 5 or more persons request a public hearing in writing within the established comment period, the Department must hold a public hearing.
  - A. **Notice of Public Hearing.** The Department shall publish a notice of the public hearing at least twice in a newspaper of general circulation in the area affected unless otherwise prescribed by the Maine Administrative Procedure Act. Such notice shall be published once at least 30 days prior to the hearing and a second time at least 10 days prior to the hearing. Notice of the public hearing shall also be published in a trade, industry, professional or interest group publication which the Department deems effective in reaching persons interested in the lease hearing. The Department shall also distribute press releases to print media outlets serving the area of the proposed lease application at least two weeks prior to the public hearing. Notice of the public hearing shall include the following information:
    - (1) a statement of legal authority under which the proceedings are being conducted, including reference to the Administrative Procedures Act, 5 M.R.S.A. §9051 *et seq.* and the aquaculture lease provisions of 12 M.R.S.A. §6072;
    - (2) a short, plain statement of the nature and purpose of the proceeding, the nature of the experimental lease application, and directions on how to obtain copies of the lease application and site report from the Department;
    - (3) a statement of the time and place of the hearing;
    - (4) a statement of the manner and time within which applications for intervention may be filed;
    - (5) a statement of the manner and time within which evidence and argument may be submitted to the Department for consideration.
6. **Municipal Approval.** The Commissioner may not issue an experimental lease for the intertidal zone within a municipality with a shellfish conservation program (12 M.R.S.A. §6671) without the consent of the municipal officers.
7. **Decision.** The Commissioner shall issue a written decision within 60 days of the close of the comment period or the date of the public hearing, unless the applicant agrees to a longer time.

The Commissioner may grant an experimental lease if he/she is satisfied that the proposed project meets the conditions contained in 12 M.R.S.A. §6072-A.

- A. Standards. In making the decision, the Commissioner must consider all applicable criteria as established in Chapter 2.37(1)(A)(1-7) of this regulation, except that the Commissioner may not consider the degree to which an experimental lease interferes with the use or enjoyment of conserved lands.
  - B. Conditions. The Commissioner may establish conditions that govern the use of the leased area and limitations on the aquaculture activities. These conditions must encourage the greatest multiple, compatible uses of the leased area, but must also address the ability of the lease site and surrounding area to support ecologically significant flora and fauna and preserve the exclusive rights of the lessee to the extent necessary to carry out the lease purpose. The Commissioner may grant the lease on a conditional basis until the lessee has acquired all the necessary federal, state and local permits. The Commissioner may require environmental monitoring of a lease site (see Chapter 2.37) and may establish any reasonable requirement to mitigate interference, including but not limited to those restrictions outlined in Chapter 2.37(1)(B).
8. Limit on Size and Duration. An experimental aquaculture lease may not be issued for a time period greater than 3 years or for an area greater than 4 acres.
  9. Statement of rights conveyed. The Commissioner shall include the following statement in a lease issued under this section: "An experimental lease for scientific research or commercial aquaculture research and development conveys only those rights specified in the lease."
  10. Actions required of lease holder. After being granted an experimental lease, a lessee shall:
    - A. Record the lease in the registry of deeds of each county in which the leased area is located.
    - B. Publish a notice in a newspaper of general circulation in the area affected.
    - C. Annually submit to the Commissioner a report for the past year on results of the scientific research or commercial research and development undertaken at the lease site and a plan for the coming year. Results of commercial research and development submitted to the Commissioner are confidential records for the purposes of 1 M.R.S.A. §402(3)(A). The submitter of commercial research and development may designate information as being only for the confidential use of the Department. The Department's public record must include the indication that information so designated has been submitted to the Department, giving the name of the submitter and the general nature of the information. Upon written request, a copy of the public records in the report must be provided by the Commissioner to the municipality or municipalities in which or adjacent to which the lease is located.
    - D. Establish an escrow account or secure a performance bond in the amount required by the Department in the lease. The amount is to be determined by the nature of the aquaculture activities proposed for the lease site as follows:

Category of Aquaculture Lease:

No structure, no discharge	None
No structure, discharge	\$ 500.00
Structure, no discharge	Total combined area of all structures on lease:
≤400 square feet	\$1,500
>400 square feet	\$5,000

Structure, discharge                      \$25,000

A single performance bond for a structure, discharge lease may be held to meet lease obligations for up to no more than 5 individual leases retained by a leaseholder.

The Department may prorate the performance bond amount for a structure, no-discharge lease where structures are in excess of 2,000 square feet in order to increase the bonding requirement to satisfy the requirements of these rules.

- E. Mark the lease site according to the procedures established in Chapter 2.80 of these Regulations.
  - F. Other Licenses. The lease holder is responsible for obtaining any requisite licenses from the Department prior to beginning operations.
  - G. Persons who are issued an aquaculture lease pursuant to 12 M.R.S.A. §6072-A for shellfish must also comply with DMR regulations Chapters 2.95, 9 and or 15, 21 and 23 established in accordance with the National Shellfish Sanitation Program Model Ordinance for the sanitary control of shellfish and Chapter 24.
11. Lease Rental Fee. Lessees shall pay a lease rental fee as established in Chapter 2.43 of these Regulations.
12. Renewal. Only experimental leases for scientific research may be renewed. Commercial research and development experimental leases may not be renewed. Before deciding on a request for a renewal, the Commissioner must hold a public hearing. The Commissioner shall renew an experimental lease for scientific research unless the Commissioner finds that:
- A. the lease holder has not complied with the terms of the lease;
  - B. research has not been conducted during the term of the lease;
  - C. the research is being conducted in such a manner that is injurious to the marine organisms; or
  - D. it is not in the best interest of the State to renew the lease.
13. Annual Lease Review and Revocation. The Commissioner shall conduct an annual review of each experimental lease. The Commissioner may revoke an experimental lease if:
- A. there has been no substantial research conducted on the site within the preceding year; or
  - B. if research has been conducted in a manner injurious to the environment or marine organisms; or
  - C. if any other lease condition or terms of these regulations or any applicable law has been violated.

The revocation of an experimental lease is an adjudicatory proceeding as established in 5 M.R.S.A. §8002(1).

#### 14. Lease Term and Validity.

The term of the lease shall begin within 12 months of the Commissioner's decision, on a date chosen by the applicant. No aquaculture rights shall accrue in the lease area until the lease term begins and the lease is signed.

1. The Commissioner may grant an emergency aquaculture lease for shellfish pursuant to 12 M.R.S.A. §6072-B when the health and safety of those shellfish are threatened and the Commissioner determines that the relocation of those shellfish will not threaten the water quality of the receiving waters or the health of marine organisms in those waters. The purpose of this section is to allow for the quick relocation of shellfish as the result of an unanticipated, natural phenomenon that is beyond the control of the lease holder. There are two types of emergency situations for which these provisions can be used: a non-disease emergency such as a major storm event or accident and a disease-related emergency. The applicant bears the burden of proof to demonstrate that the organisms to be relocated will not transmit pests, disease or parasites to the new location and that the proposed lease meets all the standards set forth in these regulations.
2. Application Requirements
  - A. Form. Emergency aquaculture lease applications must be submitted on forms prescribed by the Commissioner and must contain all information required by the Commissioner for consideration of the lease.
  - B. Fee. No filing fee is required for an emergency lease application.
  - C. Emergency Relocation for Non-disease Emergencies.
    - (1) Notification Requirements. For non-disease emergencies only, the lessee can apply for a Letter of Permission when circumstances require immediate relocation of animals to ensure their health and safety. The lessee must notify the Department in writing prior to the relocation of any animals. The written notification must include the lessee's name, address, home and business phone number, the name and number of the lease site from which the animals will be moved, a location map showing the area to which the animals will be moved (U.S.G.S. topographic map, a nautical chart or other map of appropriate scale showing the area), and the number and age of the animals to be relocated.
    - (2) Letter of Permission. Within 48 hours of receipt of the written notification of a request for emergency relocation, the Department will either issue a Letter of Permission allowing for the temporary relocation of animals or issue a written denial of the request. If the request is denied, the animals must be returned to a legal lease site within 3 days of the receipt of the denial.
    - (3) Submission of Emergency Lease Application. Within 10 days of the receipt of the Letter of Permission, the applicant must submit a written application for an emergency lease. Failure to submit a written application within this timeframe will result in the revocation of the Letter of Permission.
    - (4) Terms for Temporary Approval. The Letter of Permission will remain in effect until the Department issues an emergency lease. If the Department denies the emergency lease request, the applicant must remove the animals within 3 days of the receipt of the decision.
  - D. Emergency Lease Application Requirements:
    - (1) The lessee's name, address, home and business phone number of applicant and the location of the existing lease from which organisms will be moved.
    - (2) A description of the threat and need for the emergency relocation of the organisms.

- (3) A description of the proposed lease metes and bounds or coordinates, total acreage, a map of the lease area and its adjoining waters and shorelines, with the names and addresses of known riparian owners indicated on the map as listed in the municipal tax records.
  - (4) A list of species and an estimate of the numbers of individuals to be relocated to the proposed lease site and their life cycle stage(s).
  - (5) The date of proposed relocation, the anticipated duration of the relocation, and a description of how the organisms will be managed for the duration of the lease. Indicate the size, shape and orientation of structures that will be used.
  - (6) A description of the degree or exclusive use required by the project.
  - (7) A general description of the site including type of bottom, the presence of eelgrass, natural shellfish beds, saltmarsh and the general shoreline and upland characteristics.
  - (8) A written statement from a local harbor master, Department Biologist, Marine Warden or Aquaculture Environmental Coordinator on the fishing activity, moorings and navigational channels in the area and the use of the area by riparian owners for ingress and egress.
  - (9) The written permission of every owner of intertidal land in, on or over which the emergency aquaculture activity will occur.
  - (10) For disease-related emergencies, the applicant may also be required to submit a statement of examination by a state, federal, or Department approved private laboratory indicating its findings and certifying that the marine organisms to be relocated are free of any infectious or contagious disease agents or pests or parasites based on standard methods of diagnosis.
- E. Completion. Upon receipt of a written application, the Commissioner shall determine whether the application is complete and contains sufficient information for making a decision on the application. If the application is incomplete, it shall be returned to the applicant with a written explanation of the additional information required in order to be complete.
- F. Proposed site marking. The applicant must place visible markers to delineate the area proposed to be leased according to the procedures established in Chapter 2.80.
3. Department Site and Project Review. The Department may inspect the proposed site and immediate area to obtain information on but not limited to the general characteristics of the area, the commercial and recreational use of the area and evidence of fishing activity, moorings and navigational channels. The Department may seek advice with regards to shellfish diseases for consideration in the final decision.
  4. Decision. After reviewing the application and any information obtained by the Department, the Commissioner shall issue a written decision. The Commissioner may grant a lease if he/she is satisfied that the proposed project meets the conditions contained in 12 M.R.S.A. §6072-B.
    - A. Standards: In making the decision, the Commissioner must consider the following:
      - (1) The applicant's status as a leaseholder pursuant to 12 M.R.S.A. §6072.
      - (2) The threat to the water quality of the receiving waters and to the health of marine organisms in those waters.

- (3) The reason and need for an emergency lease. The Commissioner shall consider the need for an emergency lease and whether the cause of the emergency was an unanticipated, natural phenomenon that was beyond the control of the leaseholder. Applicants are encouraged to secure a lease under 12 M.R.S.A. §6072 or §6072-A for non-emergency situations.
- (4) All applicable criteria as established in Chapter 2.37.
- B. Conditions. The Commissioner may establish conditions that govern the use of the leased area and limitations on the aquaculture activities. These conditions must encourage the health and safety of the receiving waters and the marine organisms, and that encourage the greatest multiple, compatible uses of the leased area. These conditions must also address the ability of the lease site and surrounding area to support ecologically significant flora and fauna and preserve exclusive rights of the lessee to the extent necessary to carry out the purpose of the lease. The Commissioner may grant the lease on a conditional basis until the lessee has acquired all the necessary federal, state and local permits. A lease may not be approved unless the Commissioner has received certification from the Department of Environmental Protection that the project will not violate the standards ascribed to the receiving waters classification in Title 38 §465-B.
- 5. Limit on Duration. An emergency aquaculture lease may only be issued for 6 months or less.
- 6. Extension of emergency aquaculture lease. A person wanting to extend an emergency lease beyond 6 months must submit an application for either a standard lease pursuant to 12 M.R.S.A. §6072 or a limited purpose lease pursuant to 12 M.R.S.A. §6072-A for that lease area within 60 days of being granted the emergency aquaculture lease. If the application for a new lease is accepted, the emergency aquaculture lease will remain in effect until the effective date of the new lease. If the Commissioner denies that person a lease under §6072 or §6072-A, that person's emergency aquaculture lease remains in effect until 30 days after the Commissioner's decision.
- 7. Public Notice. Upon granting an emergency aquaculture lease, the Commissioner must provide notice to the municipality in which the emergency aquaculture lease is located. Within at least 30 days from granting an emergency aquaculture lease, the Commissioner shall:
  - A. Publish notice of the emergency aquaculture lease in a newspaper of general circulation in the lease area. The notice must describe the area leased and list any restrictions in the leased area;
  - B. Mail a notice to any public agency the Department determines should be notified, including but not limited to State Planning Office, Department of Environmental Protection, and the United States Army Corps of Engineers.
- 8. Actions Required of lease holder. After being granted an emergency aquaculture lease, a lessee shall:
  - A. Record the lease in the registry of deeds of each county in which the leased area is located; and
  - B. Establish an escrow account or secure a performance bond in the amount required by the Department in the lease. The amount is to be determined according to the schedule contained in Chapter 2.40.
- 9. Revocation.

The Commissioner may revoke the lease if he/she determines that the aquaculture project fails to meet the criteria contained in Chapter 2.65(4) of these regulations. The revocation of

an emergency aquaculture lease is not an adjudicatory proceeding as established in 5 M.R.S.A. §8002(1).

#### 2.75 Minimum Lease Maintenance Standards

1. Each lessee shall mark the lease in a manner prescribed by the Commissioner in the lease.
2. Each lessee shall maintain his aquaculture lease in such a manner as to avoid the creation of a public or private nuisance and to avoid substantial injury to marine organisms.
3. Each lessee is obligated for the routine collection and proper disposal of all errant gear, errant equipment, or errant solid waste from the lease site.

#### 2.80 Marking Procedures for Aquaculture Leases

1. When required by the Commissioner in the lease, aquaculture leases shall be marked with a floating device, such as a buoy, which displays the lease identifier assigned by the Department and the words SEA FARM in letters of at least 2 inches in height in colors contrasting to the background color of the device. The marked floating device shall be readily distinguishable from interior buoys and aquaculture gear.
2. The marked floating devices shall be displayed at each corner of the lease area that is occupied or at the outermost corners. In cases where the boundary line exceeds 100 yards, additional devices shall be displayed so as to clearly show the boundary line of the lease. In situations where the topography or distance of the lease boundary interrupts the line of sight from one marker to the next, additional marked floating devices shall be displayed so as to maintain a continuous line of sight.
3. When such marking requirements are unnecessary or impractical in certain lease locations, such as upwellers located within marina slips, the Commissioner may set forth alternative marking requirements in an individual lease.
4. Lease sites must be marked in accordance with the United State's Coast Guard's Aids to Private Navigation standards and requirements.

#### 2.90 Limited-purpose aquaculture (LPA) license

##### 1. LPA License

- A. No person may engage in the activities described in 2.90 and 12 M.R.S.A. §6072-C without a current LPA license issued by the Department of Marine Resources (DMR) in accordance with these regulations. An LPA license may be issued only to an individual or to a municipal shellfish management committee established pursuant to 12 MRSA §6671. The Department shall make application forms available. A non-refundable application fee in the amount of \$50 per license application for Maine residents or \$300 for non-residents must be paid when the application is submitted. LPA licenses expire at the end of each calendar year. No more than four (4) licenses may be held by any licensee at the same time. LPA licenses are non-transferable.
- B. Density standard. There can be no more than three (3) LPA licensed sites within a 1,000-foot radius of any other existing LPA licensed site. This standard does not require a minimum separation between individual licenses; rather it is a density of licenses within any area of a 1,000' radius. See Figure 1 below for four examples of this standard where a license site is encircled by a radius of 1,000 feet.



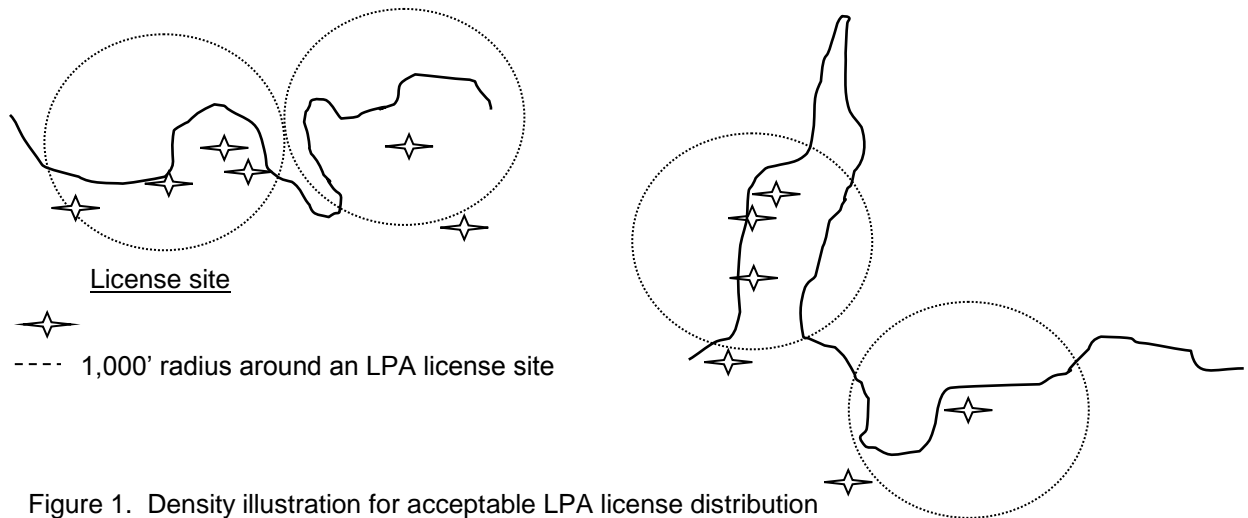


Figure 1. Density illustration for acceptable LPA license distribution

**Exemption for riparian landowners.** LPA licenses held by riparian property owners that are used to place authorized gear as listed in 2.90(2)(F)(2), within 150' of the riparian's property at mean low water and perpendicular to the property boundaries, are exempt from this density standard. Riparian landowners are responsible for demonstrating this requirement has been met. Requests for this exemption must be indicated on the application and are limited to one exemption per riparian property. The presence of a riparian landowner LPA does not count toward the density standard.

**Exemption for certain sites.** LPA licenses for gear installed within marina slips, lobster pounds, or similar enclosed or partially-enclosed sites in the coastal waters that are under the ownership or control of an entity which has the legal authority to restrict access to or use of the site and which has consented in writing to the placement of the gear on the site are exempt from this density standard.

- C. Up to three (3) assistants per license may be declared as helpers. An individual may be listed as an assistant on no more than eight (8) LPAs, other than their own, except that individuals who were listed on more than eight (8) LPAs as of March 1, 2018 may remain on the same additional LPAs until December 31, 2020, at which point they will be limited to being an assistant on no more than eight (8) LPAs. If the LPA license holder represents an educational institution, students are authorized to work under the direct supervision of the license holder who signed the application, as well as any listed helpers.
- D. When a proposed LPA license site falls within the bounds of a pending aquaculture lease application, the Department may, in its discretion, postpone the decision on that LPA license application until after the final decision on the pending application has been made.

## 2. Application requirements

### A. Species

Applications must indicate the common and scientific names of the species to be cultivated under the license in accordance with 2.90(4).

### B. Sources

Shellfish stock or seed may be obtained from either wild sources, hatcheries, or nurseries, with the exception of stock or seed of Hard Clam / quahog (*Mercenaria mercenaria*), Hen

Clam (*Spisula solidissima*), or Soft shelled clam (*Mya arenaria*). Hatcheries or nurseries are the only permitted sources for these clam species, unless the Department issues a shellfish transplant permit that authorizes the collection of undersized animals. Marine algae (all seaweeds such as reds, greens, browns or kelps) and green sea urchins shall be obtained or cultured from stock originating in Maine coastal waters.

Applications must identify the source of the stock or seed to be cultivated or grown for each species, and for hatcheries or nurseries list the current name, address and phone number of the hatchery or nursery source for each species listed under 2.90(2)(A).

All sources of hatchery supplied seed or stock must be from hatcheries approved by DMR.

All wild shellfish stock or seed used for cultivation or grow-out must originate from within the same Health Area defined under 2.05 (1) (J) as the LPA site.

Use of wild shellfish stock or seed originating from outside the Health Area of the LPA site will require evidence that the seed or stock is consistent with the species authorized under 2.90(4) and may require evidence that the seed or stock is free from disease, and will require a permit from DMR.

#### C. Site location

- (1) The application must provide one (1) geodetic coordinate in degrees/minutes/seconds to the hundredths place, the coordinate source (nautical chart number, the edition and its date or software name) and the datum of the coordinate source, for the center of the longest axis of the license site, and identify the directional orientation of the longest axis. The license site must be accurately depicted on a portion of a US Geologic Survey Topographic map or nautical chart.
- (2) The application must provide a brief description of the license site, including the bottom characteristics of the license area and whether there are eelgrass beds present in proximity to the site.
- (3) The application must include a description of current commercial and recreational fishing and other uses of the proposed license area and the immediate vicinity of the proposed license area. The description should include type, duration and amount of activity.
- (4) The application must include a certified copy of the municipal tax map for the area in the vicinity of the license site. On the map, the applicant must indicate the actual scale of the copy of the map, the location of the proposed site, and a circle drawn to scale depicting a 300-foot radius from the site. The application must also include a list of the names and current mailing addresses of the riparian owners of shorefront property within 300 feet of the site, certified by the municipal clerk or by the Bureau of Revenue Services, Unorganized Division, for unorganized territory. If the license site is located in a marina slip or lobster pound or similar site as described in 2.90 (1) (B), the owner or controlling entity of which has consented in writing to the placement of the gear, the map and list are not required.

#### D. Required Signatures

The application form shall require the following signatures:

- (1) Applicant. The individual applicant's signature, including printed name and date, which shall verify that the application does not contain false information and that the applicant will comply with all applicable laws and regulations is required. When the applicant is a municipal shellfish management committee, the chairperson of the

committee shall sign the application on its behalf, and a primary point of contact shall be provided including name, address, email address and phone number. When the applicant represents an educational institution, an administrator shall sign the application on its behalf.

(2) Municipality. Harbormaster's signature, which shall verify that it is the harbormaster's opinion that the license activities will not unreasonably impede safe navigation, will not unreasonably interfere with fishing or other uses of the area, and will not unreasonably interfere with riparian ingress and egress.

In municipalities not served by a harbormaster, a municipal officer or other elected municipal official may sign the application. For the unorganized territory where a harbormaster does not have jurisdiction, a marine patrol officer may sign.

The opinion of the harbormaster, municipal officer or official, or marine patrol officer that the license activities will not will not unreasonably impede safe navigation, will not unreasonably interfere with fishing or other uses of the area, and will not unreasonably interfere with riparian ingress and egress, shall not be determinative, but may be considered by the Department as a factor in deciding whether the criteria for the issuance of an LPA license have been met.

(3) Intertidal sites

(a) Municipal Shellfish Management Committee. If the proposed location is above the extreme low water mark in a municipality with a municipal shellfish management committee established pursuant to [12 MRSA §6671](#), the signature of the chairperson of the municipal shellfish management committee, which shall verify that the proposed LPA will not unreasonably interfere with the activities of the municipal shellfish management program, is required.

(b) Riparian landowner. For license sites located above the mean low-water mark, the signature of the riparian landowner, which shall verify that the landowner consents to the licensed activity being conducted on the intertidal land, is required.

(4) Signature missing or withheld. The absence of any required signature will result in the denial of the application. At the request of the applicant the Department may review the basis for a harbormaster's or municipal officer's or official's denial of a signature. The Department may, following such review and upon a determination that the signature was withheld without basis, approve a license application. Such a determination must take into consideration a review by the local marine patrol officer of the application and a statement from the marine patrol officer that the license activities will not unreasonably impede safe navigation, will not unreasonably interfere with fishing or other uses of the area, and will not unreasonably interfere with riparian ingress and egress.

E. Notification of riparian property owners & municipalities

(1) The applicant shall notify all riparian owners within 300 feet of the LPA site by sending, by certified mail, a copy of the LPA application, including information about how riparians can submit comments to the Department regarding issuance or renewal of the license, to the address certified by the municipal clerk or Bureau of Revenue Services, Unorganized Division for unorganized territory. Failure to include a copy of the receipt for certified mailing with the application will be grounds for denial of the application. If the license applicant is the only riparian, or if the license site is located in a marina slip or lobster pound or similar site as described in subsection 1(B) above, the owner or controlling entity

of which has consented in writing to the placement of the gear, the notification requirement is waived.

- (2) The Department shall notify any town or plantation of the final status of an application. Failure to do so does not invalidate a license.

#### F. Site Plans

- (1) Plan view

The application must include a plan view, which must be on 8.5" x 11" size paper and show the maximum layout of gear to be deployed drawn to scale, with the scale indicated to verify the 400 square foot limit. The site plan must include a north arrow with True or magnetic clearly indicated, arrows that indicate the tide's primary ebb and flood directions, mean high and low-water marks, and the distance from the license to these mean high and low-water marks. The site plan shall also include to a distance of 1,000 feet from the license in all directions, the locations of any federal or local channels, anchorages, moorings, structures, existing lease boundaries, other LPA licenses (including whether or not they are exempt from the density requirement in 2.90 (1)(B)), DMR water quality closure lines (including distances), and property lines for all riparian owners within 300 feet.

- (2) Gear description:

If gear is to be used, it may be deployed on the surface, in the water column, on the sea bottom, or below the surface of the bottom. The applicant shall indicate which of the following authorized gear will be used, and include an overhead view and cross-sectional elevation view of the gear that includes specifications on all mooring equipment to be used. Aquaculture gear other than the equipment listed below, may not be used. All dimensional information on the mooring equipment contained inside and outside the boundaries must be included pursuant to 12 M.R.S.A. §6072-C (5)(E)(2).

Upweller or "FLUPSY"

Shellfish rafts, associated predator nets and spat collectors

Shellfish tray racks and over wintering cages

Soft bags, semi rigid bags and floating trays

Lantern nets and pearl nets

Fencing and brushing

Moorings

Scallop spat collector bags

Scallop ear hangers

Long lines (vertical or horizontal)/rope grids

Bottom anti-predator netting

#### G. Renewal of licenses

- (1) To be eligible to renew an LPA license, in 2019 or in any subsequent year, the applicant must have completed any educational requirements established pursuant to 12 M.R.S.A.

§6072-C(3)(A) and must submit an application for renewal to the Department online or postmarked no later than December 31<sup>st</sup>. If a renewal application is not submitted to the Department by December 31<sup>st</sup>, the license holder is required to remove all gear and equipment from the licensed site on or before the termination of the license on December 31<sup>st</sup>.

- (2) Renewal applications shall be submitted on a form provided by the Department. A non-refundable application fee must be paid in the amount of \$50 per renewal application for Maine residents and \$300 for nonresidents.
- (3) The Department shall send a notice of all proposed renewals to the municipality in which those licenses are located and request that the municipality post the notice. The notice shall state that anyone may provide comments to the Department on the proposed renewals within 14 days of the date of the notice.
- (4) An LPA license may be renewed if the license activities continue to meet the provisions of 2.90 and 12 M.R.S.A. §6072-C.

### 3. Site Limitations

#### A. Maximum size

Gear, on any one LPA, excluding mooring equipment, may not occupy an area larger than 400 square feet. An LPA may be contiguous to another LPA.

#### B. Dimensions

The site must include four 90-degree angled corners, and may be no less than 1' or greater than 400' on any one side. Dimensions must be provided in whole feet.

#### C. Territorial waters

LPA license sites must be located within Maine's territorial waters as defined in 12 M.R.S.A. §6001(48-B) and pursuant to 12 M.R.S.A. §6072-C(2).

#### D. DMR Water Quality Program Closure Areas

(1) LPA license sites may not be located within 300 feet of any area classified as prohibited.

(2) Except as provided in subsection (3) below, LPA license sites may only be located in areas that are classified as approved or conditionally approved pursuant to DMR regulations Chapters 95 and 96. Should an area be downgraded, an LPA located within the area may be renewed for one additional year at the next date of renewal.

#### (3) Exemptions

(a) Shellfish seed. An LPA license site may be located within an area classified by DMR as prohibited, restricted, or conditionally restricted under Chapters 95 and 96, provided that only shellfish seed is cultured on the site. An LPA license site for shellfish seed may not be located within the 300:1 dilution zone around a wastewater treatment plant outfall. Shellfish seed from an LPA site in a prohibited, restricted, or conditionally restricted area can be moved only to another aquaculture lease or license site and only as provided in this subsection. The seed must be segregated from other shellfish on the destination site as required by the DMR Public Health Bureau.

i. Seed that is 25 mm or less in size can be moved to another aquaculture site without a relay permit under Chapter 21. The lessee or licensee of the destination site must notify the DMR Public Health Bureau at least eight days in advance that the seed will be moved.

If there is harvestable product on the destination site, the area around the seed will be closed to shellfish harvesting for six months by DMR.

ii. Seed that is mixed in size, both over and under 25 mm or that is greater than 25 mm, requires a relay permit under Chapter 21 to be moved to another aquaculture site. The area around the seed will be closed to shellfish harvesting for six months by DMR.

(b) Green sea urchins

The boundary line and prohibited, restricted and conditionally restricted area prohibitions in 2.90(3)(D)(1 and 2) above do not apply to the sole culture of green sea urchins.

(c) Marine algae

The boundary line and prohibited, restricted and conditionally restricted area prohibitions in 2.90(3)(CD)(1 and 2) above do not apply to the sole culture of marine algae, except that an LPA license site may not be located within the 300:1 dilution zone around a wastewater treatment plant unless marine algae or seaweed cultured on the site is not for human consumption and applicants have provided satisfactory evidence to the Department that the site is for remediation purposes only, or there is a plan for destruction or compost.

E. Department of Inland Fisheries and Wildlife (IF&W) Essential Habitats

LPA license sites may not be located within the areas regulated pursuant to 12 M.R.S.A. §§12803, 12804 and 12806 and pursuant to IF&W regulation 09-137 CMR Chapter 8, Endangered Species. Maps showing the boundaries of essential habitat are available from the IF&W regional headquarters, municipal offices, the Land Use Regulation Commission for unorganized territories and DEP regional offices.

F. United States Army Corps of Engineers (ACOE) Authorization

Upon receipt of an LPA license application, the Department shall forward a copy of the application to the ACOE for their review and approval. A permit from ACOE is required prior to the placement or use of any gear proposed in a LPA application. No structures may be located within the boundaries of a Federal Navigation Project.

4. Authorized Species

An LPA license may be issued only for the cultivation of the following species: blue mussel (*Mytilus edulis*), hard clam / quahog (*Mercenaria mercenaria*), hen clam (*Spisula solidissima*), American or eastern oyster (*Crassostrea virginica*), European oyster (*Ostrea edulis*), sea scallop (*Placopecten magellanicus*), soft-shelled clam (*Mya arenaria*), razor clam (*Ensis leei*), green sea urchin (*Strongylocentrotus droebachiensis*), bay scallops (*Aequipecten irradians*), and for marine algae (all seaweeds, including kelp). Notwithstanding 12 M.R.S.A. [§6001 \(41\)](#), for purposes of 2.90, the terms “shellfish” and “seed” include sea scallops (*Placopecten magellanicus*) and bay scallops (*Aequipecten irradians*).

5. Activity limitations & requirements

A. The licensed activity must not generate a discharge into territorial waters pursuant to 12 M.R.S.A. §6072-C (2)(A), 38 M.R.S.A. §413 and DMR regulations 2.05(1-G).

B. An LPA license applicant may declare assistants to be named on any LPA license. Declared assistant(s) named on any LPA license must be in possession of a copy of the LPA license whenever engaged in any activity at that licensed site. Individuals other than the license-holder's declared assistants may assist the license holder and, in that capacity, utilize, raise,

lift, transfer or possess any approved aquaculture gear belonging to that license holder if a hurricane warning issued by the National Weather Service is in effect for any coastal waters of the State.

C. Marine Biotoxins

(1) Closed Area compliance

There shall be no provisions made for biotoxin monitoring or testing for LPA sites.

D. Record keeping

Complete, legible and accurate records of transport, transfer, harvest, and monitoring must be maintained by the license-holder and made available for inspection for at least two (2) years. The records must include the:

(1) Department's LPA license number, site location and date.

(2) Source of shellfish, including seed if the seed is from growing areas which are not in the approved classification status pursuant to 2.90 and/or Chapter 15;

(3) Dates of transplanting and harvest;

(4) Detailed records of sales; and

(5) Records of the origin and health status of all seed or shellfish stocks reared on the site must also be maintained.

E. Amendments

No changes may be made to the LPA license during the licensing term without a written amendment of the license by the Department. Allowable mid-term amendments include the following:

1. Source of stock
2. Species
3. Mooring Type/Layout
4. Assistants
5. Contact information

6. Maintenance Standards

A. All aquaculture gear must be maintained, and kept in a fully operational condition. The license holder is obligated to collect and or remove any loose or errant gear or equipment that is dislodged from the licensed site.

B. Each LPA site that has gear on it must be clearly marked at each corner, centerpoint, or at each end of the gear, as is appropriate to the gear type deployed, with a marked buoy. LPA Site ID and "Sea Farm" must be clearly displayed on every buoy. The marked buoys shall be readily distinguishable from aquaculture gear.

C. LPA license sites must be marked in accordance with the United States Coast Guard's Aids to Private Navigation standards and requirements.

2.92 Aquaculture lease site workers operating under the authority of a shellfish license holder (12 M.R.S.A. §6601(2-A) and §6406)

1. Individuals not licensed pursuant to the following statutes may nonetheless work on aquaculture lease sites and transport or sell the cultured product produced on those sites, provided they are

authorized to do so by a license holder who either holds the aquaculture lease for the site or is employed by the lease holder. The license holder must direct and oversee the work of the unlicensed individuals. Licenses covered by this rule include:

- A. A commercial shellfish license pursuant to 12 M.R.S.A. §6601 (2-A);
- B. A mussel hand-raking license pursuant to 12 M.R.S.A. §6745 (2-A); or
- C. A mussel boat license pursuant to §6746 (2-A).

Such unlicensed individuals shall keep a copy of the appropriate license with them while working with, transporting, or selling the cultured product and shall present it to DMR upon request.

- 2. Aquaculture leaseholders shall maintain records of any unlicensed individuals working pursuant to any such licenses, including:
  - A. The names and addresses of the individuals;
  - B. The dates on which they worked; and
  - C. The name(s) and license number(s) of the license holders under whose authority they worked.

The records shall be made available for inspection by DMR upon request.

## 2.95 Water Quality Classifications and Shellfish Aquaculture

### A. Compliance

- 1. **Applicability:** This section applies to those persons who are issued an aquaculture lease pursuant to 12 M.R.S.A. §6072, §6072-A, or 6072-B, or a limited-purpose aquaculture (LPA) license pursuant to 12 M.R.S.A. §6072-C
- 2. **Water Quality:** Water quality at any site used for aquaculture shall meet the criteria for the approved, conditionally approved, restricted or conditionally restricted classification, except for the culture of seed, as described in 2.90(3)(D) and 2.95(A)(4).

Any shellfish harvested pursuant to an aquaculture lease, or permitted site, shall be subjected to relaying or depuration prior to direct marketing if the culture area or facility is located in or using water which is in:

- (a) The closed status of the conditionally approved classification;
- (b) The restricted classification; or
- (c) The open status of the conditionally restricted classification.

Relaying of shellfish requires a permit pursuant to DMR Regulations Chapter 21 Relay of Shellfish.

Depuration of shellfish requires a permit pursuant to DMR Regulations Chapter 20 Depuration.

- 3. **Closed Area compliance:** Direct market harvest of shellstock is prohibited in areas that are closed due to marine biotoxins pursuant to Chapter 96 and bacterial pollution pursuant to Chapter 95, and in those areas that may be closed by the Department. For details about closure lines contact Marine Patrol Division I, west of Port Clyde, Tel. (207) 633-9595 or Marine Patrol Division II, east of Port Clyde, Tel. (207) 667-3373, or telephone the Shellfish Sanitation Hotline at 1-800-232-4733 or on the web at: <http://www.maine.gov/dmr/shellfish%20sanitation%20hot%20line.htm>.
- 4. **Seed Shellstock source:** Seed that comes from an approved hatchery will not require a permit, except for any applicable permits for importation or introduction. Seed that comes



from any growing area in the approved classification or the conditionally approved classification in the open status will not require a permit. Seed that comes from growing areas in any other classification will require a permit. A permit may be issued by the department provided that:

- (a) The movement of the seed is approved by the Commissioner if it is from a growing area in other than the approved or conditionally approved classification. Applications may be requested to be mailed by writing the Department of Marine Resources, attn: Public Health Division, 21 State House Station, Augusta, Maine 04333-0021 or may be printed from the Department's web site;
- (b) Seed from growing areas in the restricted or prohibited classification have poisonous or deleterious substances that are at or below acceptable levels.
- (c) Seed from growing areas in the prohibited classification are cultured for a minimum of 6 months.
- (d) Seed for LPAs must meet the requirements of the Health Areas in Chapter 2.90(3)(D) and 2.05(1)(J).
- (e) Inspection: The Commissioner and his/her agents may inspect the lease site, seed, operations, and business records of seed permit holders.

#### B. Definitions

In addition to the definitions set forth in 12 M.R.S.A. §6001, 2.05 and Chapter 15.02, the following definitions shall apply in interpretation of this chapter.

1. "Approved" means a classification used to identify a growing area where harvest for direct marketing is allowed by the Department.
2. "Classification of Growing Areas" means that the growing area has been subjected to a sanitary survey and shall be correctly classified based on the twelve year sanitary survey, and its most recent triennial or annual reevaluation when available, as any one or combination of the following:
  - (a) Approved;
  - (b) Conditionally approved;
  - (c) Restricted;
  - (d) Conditionally Restricted; or
  - (e) Prohibited.

Growing areas not subjected to a sanitary survey every twelve years shall be classified as prohibited. Growing areas which do not have a completed written triennial reevaluation report shall be placed in the closed status immediately.

3. "Closed Status" means any classified growing area closed for a limited or temporary period because of:
  - (a) An emergency condition or situation;
  - (b) The presence of biotoxins in concentrations of public health significance;
  - (c) Conditions stipulated in the management plan of conditionally approved or conditionally restricted areas; or
  - (d) Failure of the DMR to complete a written sanitary survey or triennial review reevaluation report.
4. "Conditionally approved" means a classification used to identify a growing area which meets the criteria for the approved classification, only under certain conditions described in a management plan. See Chapter 15.02(A)(16).

5. "Conditionally restricted" means a classification used to identify a growing area which meets the criteria for the restricted classification, only under certain conditions described in a management plan. See Chapter 15.02(A)(17).
6. "Growing area" means any site which supports or could support the propagation of shellstock by natural or artificial means. See Chapter 15.02(A)(36).
7. "Open Status" means, except for an area in the prohibited classification, any correctly classified growing area that is normally open for the purposes of harvesting shellstock, subject to the limitations of its classification.
8. "Reopened Status": a growing area temporarily placed in the closed status shall be returned to the open status only when:
  - (a) The emergency situation or condition has returned to normal and sufficient time has elapsed to allow the shellstock to reduce pathogens or poisonous or deleterious substances that may be present in the shellstock to acceptable levels. Studies establishing sufficient elapsed time shall document the interval necessary for reduction of contaminant levels in the shellstock to pre-closure levels. In addressing pathogen concerns, the study may establish criteria for reopening based on coliform levels in the water; or
  - (b) The requirements for biotoxins or conditional area management plans as established in the Department's Biotoxin Contingency Plan or Conditional Area Management Plans, respectively, are met; and
  - (c) Supporting information is documented by a written record in the central file.
9. "Restricted" means a classification used to identify a growing area where harvesting shall be by special license and the shellstock, following harvest, is subjected to a suitable and effective treatment process through relaying or depuration. See Chapter 15.02(A)(75). (The term "special license" in this chapter section does not refer to licenses issued pursuant to 12 M.R.S.A. §6074.)
10. "Seed" means any juvenile shellstock that meet one of the following criteria:
  - (a) Which are obtained from hatcheries.
  - (b) Which do not exceed 10 percent of the market weight.
  - (c) Which are 6 months or more growing time from market size.
 Note: Seed mussels are defined separately in Chapter 12.03(B).
11. "Shellfish" means all species of:
  - (a) Clams, mussels, quahogs and oysters, whether:
    - (1) Shucked or in the shell;
    - (2) Fresh or frozen; and
    - (3) Whole or in part.
  - (b) Scallops in any form, except when the final product form is the adductor muscle only. See Chapter 15.02(A)(81)
12. "Shellstock" means live molluscan shellfish in the shell; and shellfish which have not been removed from their shells (12 M.R.S.A. §6001(42) and Chapter 15.02(A)(82)).
13. "Status of Growing Area" means that the status of a growing area is separate and distinct from its classification and may be open, closed or inactive for the harvesting of shellstock.

CHAPTER 2  
AQUACULTURE LEASE REGULATIONS

INDEX

EFFECTIVE DATE:

July 11, 1983

AMENDED:

October 28, 1986- Section 80

September 1, 1987- Section 90

December 27, 1988

February 25, 1998

May 28, 1998

June 24, 2002 – Section 01 repealed; sections 10(1), 12(3), 60(3)(1), 64(2)(3)(G), 75(1)&(2) and 80(2)&(3)

July 22, 2002 – Section 5 amended, Section 90 added

August 26, 2002 – Section 10(3), 31(4), 37(1)(1,2)

February 17, 2003 – Sections 10, 15, 37, 40, 64, 75

February 17, 2003 – Sections 10(3)(3), 27(2); Provisional adoption (major substantive rulemaking)

June 24, 2003 – Sections 10(3)(3), 27(2)

January 1, 2005 – Sections 10, 43, 45, and 60

January 1, 2005 – Section 90

April 25, 2005 – Section 90(2)(G)(2)

May 1, 2005

July 15, 2005 – Section 37(1)(A)(8)

July 15, 2005 – Section 37(1)(A)(9-10)

January 1, 2006 – Sections 37, 80, and 90

January 24, 2007 – Sections 2.12(3), 45(3)(D), 60(3)(D)

January 24, 2007 – Sections 5(1)(K&L), 46, 60(1), 64(7)(A) and punctuation

May 26, 2008 – Sections 90(3)(C)(3), 95 (absorbs Ch. 22)

May 26, 2008 – Sections 2.05 and 2.90(1)&(2)

April 20, 2009

February 22, 2010 – Sections 2.10(6) and 2.64(7)(C)

August 22, 2011 – Section 2.90 (2)(B), (F)(2)(j), (3)(C)(4) and (4)

November 14, 2012 –Section 2.90 (1),(2),(3),(4),5)

October 17, 2013-Sections 2.60(1)&(2) and 2.64(1)

March 19, 2018-Sections 2.90(1)(B)(C)&(D); 2.90(2)(B); 2.90(C)(1)(2)&(4); 2.90(D)(1)&(2); 2.90(E)(1); 2.90(F)(1)(2); 2.90(G)(1)&(3); 2.90(3)(A)-(F); 2.90(4); 2.90(5)(A)(C)&(D); 2.90(6)(B); 2.95(A)(2)&(4)